

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ULYSSES L. MANGUNE,

Plaintiff,

v.

MERRILL GARDENS FAERLAND
TERRACE ALZHEIMERS CARE
CENTER,

Defendant.

CASE NO. C13-299MJP

ORDER DIRECTING CLERK TO
IDENTIFY PRO BONO
COUNSEL AND A CR 39.1
NEUTRAL FOR EARLY ADR
PROCEEDINGS

This matter comes before the Court on Plaintiff's application for Court-appointed counsel. (Dkt. No. 9.)

Having reviewed plaintiff's motion for the appointment of counsel (Dkt. No. 9), as well the response from the Court's Pro Bono Screening Committee, the Court ORDERS that plaintiff's motion is GRANTED IN PART for the limited purpose of conducting an early alternative dispute resolution procedure pursuant to LCR 39.1.

Generally, the decision to appoint pro bono counsel rests within "the sound discretion of the trial court and is granted only in exceptional circumstances." Agyeman v. Corrections Corp.

1 of America, 390 F.3d 1101, 1103 (9th Cir. 2004). A finding of exceptional circumstances
2 requires an evaluation of both the likelihood of success on the merits and the ability of the
3 plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved.
4 Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). These factors must be viewed
5 together before reaching a decision on a request for counsel. Id.

6 At this early stage of litigation, the Court finds that Plaintiff has failed to demonstrate that
7 exceptional circumstances warrant the appointment of counsel for the duration of this case. To
8 date, Plaintiff's submissions have not provided compelling arguments or any evidence indicating
9 that this case is particularly likely to succeed on the merits. Moreover, Plaintiff has not shown
10 that he is wholly unable to articulate his claims pro se.

11 However, the Court also finds that the circumstances of this case indicate that the
12 interests of justice will best be served if counsel from the Western District Pro Bono Panel is
13 appointed to represent the Plaintiff for the limited purpose of conducting an early ADR
14 procedure pursuant to LCR 39.1. The undersigned also finds that the Court will benefit from
15 appointed counsel's assistance with Plaintiff's efforts to effectuate service and establish standing
16 to bring his lawsuit. Finally, the undersigned finds that an early ADR procedure under LCR 39.1
17 may bring about an early, inexpensive and consensual resolution of the litigation by facilitating
18 and improving communication between the parties, limiting, narrowing or simplifying the issues
19 in dispute, and potentially achieving settlement of some or all issues between the parties.

20 Accordingly, the parties are directed to read and comply with the deadlines and
21 procedures outlined in § 3(g)-(i) of the Pro Bono Plan.¹ Specifically, following entry of the
22 Order of Appointment, the Clerk shall send the appointed attorney a Notice of Appointment and
23 Interim Notice of Appearance, which shall include a statement that defense counsel must only
24

¹ The Pro Bono Plan was most recently amended effective August 1, 2010, and is
available on the Court's website via links to "Court Services" or "Representing Yourself," at
<http://www.wawd.uscourts.gov/documents/ReferenceMaterials/GeneralOrders/08-12-10%20GO%20adopting%20Amended%20Pro%20Bono%20Plan.pdf>.

1 communicate with the appointed attorney, and not the Plaintiff, in accordance with Rules 4.2(b)
 2 and 4.3(b) of the Washington Rules of Professional Conduct. *See* Pro Bono Plan § 3(g). The
 3 Clerk's Notice of Appointment and Interim Notice of Appearance also suspends the provisions
 4 of CR 16(a) and (d) requiring a scheduling conference, joint status report, and scheduling order,
 5 until completion of the ADR proceedings. *See* Pro Bono Plan § 3(i).

6 As soon as practical following appointment, pro bono counsel is directed to confer with
 7 the Plaintiff regarding the ADR procedures available under LCR 39.1(3). Pro bono counsel shall
 8 then meet and confer with opposing counsel to develop a plan for an early ADR procedure, and
 9 shall attempt to reach agreement on the factors listed in § 3(i)(iv)(A)-(E). The parties are
 10 advised that they are required to submit a Joint Pro Bono ADR Status Report addressing these
 11 factors not later than twenty (20) days following the Clerk's Notice of Appointment and Interim
 Notice of Appearance. *See* Pro Bono Plan to § 3(i)(v).

12 Unless otherwise ordered, the early ADR procedure shall be completed not later than
 13 seventy-five (75) days following the Clerk's Notice of Appointment and Interim Notice of
 14 Appearance. *See* Pro Bono Plan § 3(i)(vii). Upon completion of the ADR procedure, appointed
 15 counsel shall submit a report to the Court and opposing counsel stating (1) when the ADR
 16 procedure occurred, and (2) whether the case settled as to some or all issues.² Following
 17 submission of this report, appointed counsel's limited representation shall be deemed complete,
 18 and counsel may submit a proposed order terminating the limited representation. At that time,
 19 appointed counsel may move for an award of attorney's fees under any applicable authority,
 although the Court is unable to assure counsel of compensation.

20 Accordingly, Plaintiff's motion (Dkt. No. 9) is GRANTED IN PART. The Clerk is
 21 DIRECTED to identify counsel from the Pro Bono Panel to represent plaintiff for the limited
 22 purpose of conducting an early ADR procedure pursuant to LCR 39.1. The Clerk is further

23
 24 ² If the ADR procedure was a mediation, however, the mediator's report required by CR
 39.1(c)(6) will serve in lieu of appointed counsel's report.

1 directed to identify an attorney from the LCR 39.1 register of neutrals who appears suited to
2 serve as a neutral in such early ADR proceedings. Upon notification from the Clerk, the
3 undersigned shall appoint the selected attorney to represent the plaintiff in early ADR
4 proceedings in this case. Finally, the Clerk is directed to send a copy of this Order and § 3(g)-(i)
5 of the Pro Bono Plan to plaintiff and counsel for defendant.

6 Through this Order, the Court hereby suspends its prior order setting trial date and related
7 dates (Dkt. No. 15). If the ADR procedure does not resolve all issues, the parties are directed to
8 file a joint status report with the Court within 10 days of the conclusion of the ADR procedure,
9 and the Court will set a new case schedule.

10 Dated this 5th day of July, 2013.

11
12
13 

14 Marsha J. Pechman
15 United States District Judge
16
17
18
19
20
21
22
23
24